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SUMMARY

MariTEL, Inc. hereby requests that the Federal Communications Commission (“FCC” or “Commission”) initiate a rule making proceeding designed to amend Part 80 of its rules and regulations to promote the more intense use of frequency assignments designated for VHF public coast (“VPC”) operations. When the Commission first enacted its rules, ship-to-shore communications were only available through a marine coast operator. Today, however, ship-to-shore communications are available from a variety of communications providers. The FCC has already provided VPC licensees with some flexibility to use their channel capacity for purposes other than traditional ship-to-shore communications. Despite this flexibility, the rules are still structured in a manner that reflects that VPC channels were primarily allocated for ship-to-shore communications. The Commission, therefore, should adopt new regulations under Subpart A of Part 80 to permit VPC licensees to offer fixed, mobile, private or common carrier services.

MariTEL’s request that the Commission permit VPC operators to offer services other than public correspondence services is consistent with the Commission’s goal of affording licensees greater flexibility to make more efficient use of the spectrum. Moreover, modifying the Commission’s rules would not impair the historic purposes of marine correspondence services, which primarily relate to safety and distress communications. In revisiting its rules, the Commission should address its partitioning, disaggregation and construction requirements and should clarify that the myriad of regulatory obligations of Part 80 do not apply to inland VPC licensees.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Amendment of the Commission's) **RM - _____**
Rules to Promote the Use of)
VHF Public Coast Station Frequencies)

To: The Commission

PETITION FOR RULE MAKING OF MARITEL, INC.

Maritel, Inc. ("MarITEL")^{1/} by its counsel and pursuant to the provisions of Section 1.401(a) of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.401(a) (2002), hereby petitions the FCC to amend its rules to promote the more intensive use of frequency assignments designated for VHF public coast ("VPC") operations.

I. BACKGROUND

MarITEL has been the largest provider of VHF public coast station ("VPC") services in the United States. Its current operations consist of stations throughout most of the United States Gulf Coast, the U.S. eastern seaboard and the Great Lakes, each interconnected to MarITEL's control switching office located in Biloxi, Mississippi.^{2/} MarITEL actively participated in both

^{1/} MarITEL was formerly know as WJG Maritel Corporation and participated in FCC rulemaking proceeding as such. In addition, MarITEL's wholly owned subsidiaries (the "Subsidiaries") hold the following authorizations: MarITEL Northern Atlantic, Inc. – WPOJ530; MarITEL Mid-Atlantic, Inc. – WPOJ533; MarITEL Southern Atlantic, Inc. – WPOJ534; MarITEL Mississippi River, Inc. – WPOJ535; MarITEL Great Lakes, Inc. – WPOJ531; MarITEL Southern Pacific, Inc. – WPOJ536; MarITEL Northern Pacific, Inc. – WPOJ532; MarITEL Hawaii, Inc. – WPOJ537; and MarITEL Alaska, Inc. – WPOJ538. Any references to MarITEL herein are to Maritel, or its predecessor in interest, or its subsidiaries, as appropriate.

^{2/} However, as MarITEL notified the FCC on March 27, 2003, it will be suspending all public coast station services as of June 6, 2003. *See, e.g.*, FCC File Nos 0001252148,

of the FCC's auctions of VPC station licenses, and was the winning bidder of sixteen regional licenses. MariTEL has been providing ship-to-shore services for over twenty years.

Although, as more completely discussed in the MariTEL Rule Waiver Request, MariTEL continues to assess the provision of advanced maritime services, it has begun to evaluate the use of its licensed spectrum for other purposes. That evaluation arises from a variety of circumstances, including the provision of service to the maritime community by other commercial mobile radio service ("CMRS") licensees. In the past, reliable ship-to-shore voice communications was only available through a marine coast operator. There were few, if any, other alternatives for commercial shipping companies and especially for recreational boaters, to communicate to points in the public switched telephone network. Today, ship-to-shore communications are available from a variety of communications providers, including cellular operators and licensees of personal communications services ("PCS") and specialized mobile radio ("SMR") systems. Commercial vessel operators may continue to use VHF radios to conduct port operation and vessel traffic related communications and all mariners may employ VHF radios to communicate with the United States Coast Guard (or if they make international voyages, the appropriate foreign authority) in distress communications. However, there is little demand for the use of VHF spectrum to initiate and terminate calls to and from the public switched network. The public interest would be better served, therefore, if VPC licensees had greater flexibility to use the VPC spectrum for which they are licensed in a more intense fashion.

The FCC has already provided VPC licensees with some flexibility in the event that they do not wish to use all of their channel capacity to provide traditional ship-to-shore communications that initiate from or terminate in the public switched network. In particular, the

0001252177, 0001252156, 0001252257, 0001252325, 0001252214, 0001252280, 0001252315 and 0001252335 ("MariTEL Rule Waiver Request").

FCC has permitted VPC licensees to provide public correspondence service to units on land.^{3/} It has also permitted VPC licensees to provide fixed or mobile services.^{4/} In addition, VPC licensees can designate some or all of their spectrum for private mobile radio service (“PMRS”) use.^{5/} Moreover, the FCC’s rules governing coast station licensees have been modified to mirror, in many important respects, the rules that govern other CMRS providers. For example, VPC licensees can partition and disaggregate their licenses.^{6/}

Despite these Commission actions, the FCC’s rules are still structured in a manner that reflects that VPC channels were primarily allocated for ship-to-shore communications. While VPC licensees can provide land service, for example, that service is limited to “public correspondence” and priority must be provided to marine originating communications.^{7/} Similarly, while VPC licensees can offer PMRS, and while, under certain circumstances they can offer land service, they cannot provide land based PMRS service. Section 80.123 provides that service on land can only be provided for public correspondence purposes.

These regulatory impediments restrict the provision of service in many ways. The most obvious restrictions are on those VPC licenses that are not intended to serve vessels at all. In determining to conduct an auction for VPC channels on a nationwide basis, the Commission

^{3/} 47 C.F.R. § 80.123 (2002).

^{4/} *Amendment of the Commission’s Rules Concerning Maritime Communications*, PR Docket No. 92-257, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 ¶ 52 (1998) (“*Third Report and Order*”).

^{5/} 47 C.F.R. § 20.9(b) (2002).

^{6/} 47 C.F.R. § 80.60(a) (2002).

^{7/} 47 C.F.R. § 80.123 (2002). *See also In the Matter of Warren C. Havens Petition for Declaratory Ruling or Waiver Regarding Section 80.123 and Other Commission’s Rules as Applied to Automated Maritime Telecommunications Service Systems*, DA 03-1115, *Order* (rel. April 18, 2003).

created so-called “inland VPCs.”^{8/} The geographic areas covered by these licenses do not contain navigable waterways. Yet, among other requirements, these inland VPC licensees must provide priority communications to maritime traffic. They also cannot provide PMRS service for the reason cited above. Because there is no maritime traffic in areas covered by inland VPC authorizations, the requirement for these licensees to provide priority communications to maritime traffic is a meaningless obligation.^{9/} The restriction against these licensees providing PMRS, as well as requiring that they provide “public correspondence” is similarly contrary to the public interest.

Even more problematic are licenses that may be held by disaggregatees and partitionees of spectrum held by maritime VPC licensees. Because maritime VPC licenses cover large geographic areas, maritime VPC licensees could partition their authorizations to an entity whose partitioned authorization would not include any navigable waterways. Yet, the partitioned licensee would still hold an authorization the provision of service for which would be limited by Part 80 of the FCC’s rules. Similarly, a maritime VPC licensee could disaggregate spectrum in an area where there are navigable waterways, but could retain sufficient spectrum provide other services. There is no reason, in that instance, for the new licensee holding the disaggregated spectrum to be obligated to conform to current Part 80 requirements. Finally, a maritime VPC licensee, in light of the changed nature of the competitive environment noted above, itself may wish to simply provide commercial or private wireless services without the obligations imposed on Part 80 licensees. Yet, under those circumstances, the provision of these types of services would also be governed by Part 80.

^{8/} *Third Report and Order* ¶ 15.

^{9/} As noted below, there are many other Part 80 obligations that cannot logically apply to inland VPC licensees.

Based on the foregoing, MariTEL recommends that the Commission amend its regulations to permit licensees of VPC spectrum to elect the regulatory regime to which they would be subject, and to have relevant obligations arise from that election.^{10/}

II. DISCUSSION

A. Introduction

The Commission should regulate VPC spectrum with one primary goal: that the spectrum be utilized as fully as possible. Section 80.49 of the rules, which governs construction requirements, is designed to ensure that spectrum is fully utilized. As noted above, the FCC's rules already permit VPC licensees to offer PMRS and to provide fixed or mobile services. However, except for services offered under the restrictive provisions of Section 80.123, licensees under Part 80 must employ equipment type accepted under Part 80. Even under Section 80.123 (pursuant to which licensees can employ equipment approved for use under Parts 80, 22, or 90^{11/}), licensees cannot provide land based PMRS.

MariTEL is aware that many Part 80 regulatory obligations only apply, by their terms, to entities providing maritime public correspondence communications and that those obligations may not apply today to, for example, inland VPC licensees or partitionees of maritime VPC licenses in inland areas.^{12/} Other Part 80 regulatory obligations do not apply to inland VPC

^{10/} MariTEL recognizes that the FCC could, as an alternative, note the particular Part 80 regulations that would not be applicable to entities that chose not to provide maritime services. MariTEL does not believe such an approach to be in the public interest. In order to promote both logic and regulatory parity, the Commission should subject regulatees to the rules that govern the service they are actually providing.

^{11/} 47 C.F.R. § 80.123(d); *see also Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, *Third Report and Order and Memorandum Opinion and Order*, 12 FCC Rcd 37533 ¶ 22 (1998).

^{12/} For example Section 80.303(a) of the FCC's rules, 47 C.F.R. § 80.303(a), only applies to coast stations "serving rivers, bays and inland lakes."

licensees as a matter of common sense.^{13/} However, certain other regulations that apply to all VPC licensees limit the type of facilities that can be employed, or services that can be offered by, those licensees. For example, Sections 80.1101 and 80.1103 of the FCC's rules require that equipment used for VPC services must contain minimum digital selective calling ("DSC") capabilities.^{14/} This obligation, and others like it, should not apply to entities that hold licenses for VPC spectrum that will not provide maritime public correspondence services.

Therefore, the FCC should adopt new regulations under Subpart A of Part 80 which, like Part 27 governing Wireless Communications Service ("WCS") licensees, or Subpart L of Part 101 of the rules governing Local Multipoint Distribution Service ("LMDS") licensees, permits VPC licensees to offer fixed, mobile, private, or common carrier services.^{15/} Upon making an appropriate election, VPC licensees would be permitted to operate with equipment approved for the type of use they select and would be governed by the FCC's rules and decisions applicable to the type of service they elect. Similarly, to the extent that a VPC licensee did not provide marine public correspondence services, it would not be obligated to comply with those provisions of Part 80 designed to govern the marine public correspondence services, including the obligation to employ equipment type approved under Part 80 of the rules.^{16/}

^{13/} For example, Sections 80.105 and 80.106 generally require VPC licensees to acknowledge and exchange radio communications with any ship or aircraft station at sea. 47 C.F.R. §§ 80.105, 80.106.

^{14/} See 47 C.F.R. §§ 80.1101(c)(2), 80.1103(a).

^{15/} The FCC would also be required to amend Section 2.106 of its rules to reflect this additional flexibility.

^{16/} In the past, MariTEL urged the Commission to specify particular 12.5 kHz channels that could be used by VPC licensees. See *In the Matter of Amendment of Parts 13 and 80 of the Commission's Rules Concerning Maritime Communications*, WT Docket No. 00-48, Comments of MariTEL at 7 (filed August 23, 2000); *In the Matter of Amendment of the Commission's Rules*

MariTEL does not propose the elimination or evisceration of Part 80 and obligations that apply to licensees providing maritime public correspondence services. Licensees would still be permitted to provide marine public correspondence services and would only be permitted to do so pursuant to the provisions of Part 80. Therefore, to the extent that VPC licensees believe that the provision of maritime public correspondence services are economically viable, the provision of that service would be governed by Part 80 of the FCC's rules. However, to the extent that VPC licensees do not wish to provide marine public correspondence services (as they are already permitted pursuant to, for example, Section 20.9(b) of the FCC's rules) there is no reason for Part 80 rules to apply.

Moreover, MariTEL's proposal to use the spectrum in a more flexible manner is consistent with the Commission's spectrum policy reform initiatives. As Chairman Powell has noted, "license holders should be granted the maximum flexibility to use -- or allow others to use -- the spectrum, within technical constraints, to provide any service demanded by the public . . . to move spectrum quickly to its highest and best use."^{17/} The Chairman's spectrum reform

Concerning Maritime Communications, PR Docket No. 92-257, Comments of MariTEL at 4-6 (filed April 5, 2002); *In the Matter of Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, Reply Comments of MariTEL at 2-3 (filed May 6, 2002). MariTEL recognizes that in other services, the Commission has defined that a licensee is permitted to employ as a spectrum band, rather than a center frequency. See, e.g., *Lower and Upper Paging Bands Auction Scheduled for June 26, 2001*, Public Notice, DA 01-850 at 2B-4B (April 9, 2001). Accordingly, and consistent with the approach MariTEL recommends herein, it hereby withdraws its request that the FCC specify 12.5 kHz channels available for use for VPC licensees and instead requests that the FCC amend its rules to define, by upper and lower limits, the spectrum that may be used by VPC licensees.

^{17/} "Broadband Migration III: New Directions in Wireless Policy," Remarks of FCC Chairman Michael K. Powell at the Silicon Flatirons Telecommunications Program (Oct. 30, 2002), available at <http://www.fcc.gov/Speeches/Powell/2002/spmkp212.html>; see also Remarks of FCC Chairman Michael K. Powell Dialogue with Thomas Wheeler at the National Association of Cellular Telecommunications & Internet Association (March 19, 2002), available at <http://www.fcc.gov/Speeches/Powell/2002/spmkp206.html> ("the Commission has been focused on thinking about flexibility and how to introduce it so that we can create much more

initiatives are the focus of the Spectrum Policy Task Force's ("Task Force") undertakings to "increase the public benefits derived from the use of [the] spectrum."^{18/} In the Spectrum Task Force Report, the Task Force recommended that "the Commission evolve its spectrum policy toward more flexible and market-oriented spectrum policies . . . [that] allow for maximum feasible flexibility of spectrum use."^{19/} The Task Force also has noted that affording licensees with flexibility allows them "to make fundamental choices about how they will use the spectrum" and "this approach tends to lead to efficient and highly-valued spectrum uses."^{20/} MariTEL's request to offer services other than traditional VPC services is consistent with the Commission's goal of affording licensees with greater flexibility to make more efficient uses of the spectrum.

MariTEL recognizes that a result of the changes it proposes will be the provision of fewer maritime public correspondence services. Nonetheless, the Commission should re-evaluate whether it is in the public interest to mandate that VPC spectrum be subject to regulations that effectively require them to provide marine public correspondence services. The Part 80 obligations that effectively require the provision of marine public correspondence services primarily relate to safety and distress communications that, for historical purposes, have been imposed on public coast station licensees.

However, as the Commission is aware, the Coast Guard is in the process of implementing the National Distress and Response System Modernization Project ("NDSRMP," now

flexible market mechanisms, including secondary markets and other ways in which we can limit our intercession in getting spectrum to higher and better uses.").

^{18/} Spectrum Policy Task Force, ET Docket No. 02-135, *Nov. 2002 Report* at 1 (rel. Nov. 15, 2002) ("Task Force Report").

^{19/} *Id.* at 15.

^{20/} *Id.* at 16.

designated as the “Rescue 21” project by the Coast Guard). When the NDSRMP is fully operational, the Coast Guard will have independent capabilities to monitor channel 70, on which digital selective calling (“DSC”) distress messages will be originated. Similarly, while the Commission previously required that coast stations maintain a channel 16 watch, the Commission granted a series of rule waiver requests from public coast stations asking that they be exempt from maintaining that watch.^{21/} Ultimately, and in light of the waiver requests it received and granted, the Commission amended its regulations to exempt coast stations from maintaining the channel 16 watch requirements.^{22/} Further, as the Commission recently made clear, public coast stations otherwise required to monitor channel 16 need not maintain the watch at all times; they are only required to maintain the watch when their stations are in operation.^{23/}

These decisions recognize that watch requirements in particular, and distress and safety communications in general, are the responsibility of the Coast Guard and not of public coast stations. As the Coast Guard recognizes, the National Distress and Response System, operated by the Coast Guard, is designed to monitor distress calls, alert response units and coordinate

^{21/} See, e.g., *Request for Waiver of the Requirements in Sections 80.303 and 80.453 of the Rules to Permit Public Coast Station WHU487 to Cease Safety Watch on 156.800 MHz and Serve Mobile Vehicles on Land, Order*, 9 FCC Rcd 221 (1994) (granting waiver request for public coast station licensee seeking waiver of Channel 16 watch).

^{22/} *Amendment of the Commission’s Rules Concerning Maritime Communications*, PR Docket No. 92-257, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 ¶ 57 (1998).

^{23/} *Amendment of the Commission’s Rules Concerning Maritime Communications*, PR Docket No. 92-257, *Fourth Further Notice of Proposed Rulemaking*, 17 FCC Rcd 5080 ¶ 7 (2001). Because coast station operators can choose when they wish to be in operation, the coast station operator, and not the Coast Guard ultimately decides when a channel 16 watch is maintained in instances when the channel 16 watch is required.

response activities.^{24/} These functions were never intended to be the responsibility of private parties. VPC licensees should not be required to act as a proxy for the Coast Guard, which has primary responsibility for distress and safety communications. Based on the foregoing, MariTEL believes that current requirements that VPC licensees to provide safety and rescue communications are no longer relevant.

There are three circumstances in which this new paradigm would be applied: 1) to inland VPC licensees; 2) to licensees of disaggregated or partitioned maritime VPC spectrum; and 3) to VPC licensees that wish to provide other than marine public correspondence services. The following describes how the proposed regulatory scheme would satisfy the goals noted above in each of these three cases.

B. Inland VPC Licensees

MariTEL's proposal has the most obvious applicability to inland VPC licenses. There is no reason for inland VPC licensees to be regulated under Part 80 of the FCC's rules. The areas served by inland VPC licensees are distant from navigable waterways. These licensees will certainly provide either PMRS or CMRS (either on a fixed or mobile basis). These entities should be regulated, therefore, as are other PMRS or CMRS licensees, and not as entities providing marine public correspondence service. By making it clear that the myriad of regulatory obligations of Part 80 do not apply to this class of licensee, the Commission will ensure that the spectrum is used more intensely.

^{24/} See U.S. Dept. of Transportation, United States Coast Guard, *National Distress & response System Modernization Project (NDRSMP – Project Description)*, May 5, 2002 (noting that the NDRSMP will not be operational until 2006), available at <http://www.uscg.mil/hq/g%2Da/ndrsmpl/descript.htm>.

C. Disaggregated and Partitioned Licenses

Similarly, entities holding licenses for maritime VPC spectrum that has been disaggregated or partitioned should be permitted to elect the scheme under which they are regulated. An entity that holds partitioned VPC spectrum in a marine VPC, but that is not located near navigable waterways should be regulated like inland VPC licensees and not be subject to Part 80 regulation.

D. Maritime VPC Licensees

This same regulatory treatment should be afforded to a maritime VPC licensee that wishes to provide any other services that are not maritime public correspondence services. As noted above, MariTEL recognizes that the FCC's rules already provide VPC licensees with the ability to serve units on land under limited circumstances. The rules already provide VPC licensees the ability to provide PMRS services, or offer service on a fixed or mobile basis. However, the provision of all of those services are nonetheless governed by the largely inapplicable or otherwise restrictive Part 80 regulations. Those rules restrict a VPC licensee from providing a competitive wireless service.

E. Construction Requirements

The use of maritime VPC spectrum for PMRS or CMRS purposes should be governed, as suggested above, by whether the VPC licensee will continue to be able to satisfy the FCC's goal of promoting the full use of the spectrum. Section 80.49(a) of the rules requires that, in order to satisfy the Commission's construction requirements, a licensee must demonstrate that it is providing substantial service at the five year anniversary of the date its license was first issued, and again at the ten (10) year anniversary of the license grant. The Commission's decision adopting this requirement suggests that maritime VPC licensees that desire to satisfy this

construction requirement may demonstrate that they service one third of the navigable waterways in the VPC area in five (5) years, and two thirds of the navigable waterways in ten years.^{25/}

MariTEL does not suggest that the FCC depart from this test. VPC licensees should still be obligated to meet this requirement. However, they should no longer be required to provide service governed by Part 80 in order to meet that requirement. Licensees should be able to meet the requirement by providing other CMRS or PMRS fixed or mobile service services.^{26/}

The Commission should amend its regulations, however, to make it clear that when a marine VPC disaggregates to an entity that does not provide public correspondence services, the new licensee should have the option of meeting the construction requirement independently. That is, the disaggregatee of spectrum in coastal areas or in areas in which there are rivers, bays and inland lakes should be permitted to independently satisfy a construction requirement to provide CMRS or PMRS service.^{27/} In this manner, an authorization held by a disaggregatee would not be jeopardized if the VPC licensee responsible for meeting the construction requirement failed to perform.

^{25/} The Commission's rules specify the signal strength that determines the locations where a licensee is providing coverage. MariTEL recommends that the FCC retain this definition to determine if a licensee has satisfied the provisions of Section 80.49(a) of the regulations.

^{26/} Similarly, MariTEL does not suggest a change in the provisions of Section 80.60 of the FCC's rules 47 C.F.R. § 80.60. This provision of the FCC's regulations governs the entities that are responsible for meeting construction obligations in the event of partitioning and disaggregation. As noted above, the FCC's rules already permit VPC licensees to provide fixed, as well as mobile services. Moreover, the provisions of Section 80.49 of the FCC's rules only require licensees to demonstrate that they are providing "substantial service" by the relevant benchmarks. Other provisions of the FCC's rules address how the FCC measures whether substantial service is provided on frequencies used for fixed services. Therefore, MariTEL believes that no modification of Section 80.49 is required to accommodate the potential provision of any time of service for which VPC licensees will be authorized.

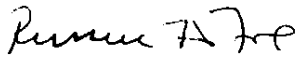
^{27/} Today, the rules provide that either: 1) each licensee agrees to share responsibility for meeting the substantial requirement; or 2) one of the licensees agrees to meet the substantial service requirement.

III. CONCLUSION

Based on the foregoing, MariTEL urges the Commission to initiate a Notice of Proposed Rule Making designed to promote the more intense use of VPC spectrum and to act in a manner consistent with the recommendations made herein.

Respectfully submitted,

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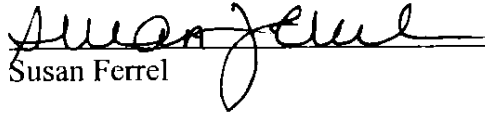
May 16, 2003

CERTIFICATE OF SERVICE

I, Susan Ferrel, hereby certify that on this 16th day of May 2003, the foregoing Petition for Rulemaking was served via hand delivery to the Office of Secretary of the Federal Communications Commission and sent via first class mail, postage prepaid on the following:

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